CF0000064625

(3)

समक्ष : मध्य प्रदेश उच्च न्यायालय, जबलपुर ।

फौजदारी अपील क्रमांक - 2268 /2000

अपीलार्थी (जेल में) : माडवी बैसी पत्नी माडवी मुक्को माडिया
उम्र-लगभग 36 वर्ष, निवासी- वास्तानार
मुक्को पारा, कोडेनार, थाना-कोडेनार
जिला बस्तर (मo पु०)

विरुद्ध

अनावेदक : मध्य प्रदेश शासन

फौजदारी अपील अंतर्गत धारा 374(2) दण्ड प्रक्रिया संहिता

दोष सिद्ध — दण्डादेश

302

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CRA NO 22 सन् 2000

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:-

HON'BLE SHRI L.C. BHADOO AND
HON'BLE SHRI DHIRENDRA MISHRA, JJ.

24-1-2006

Smt. Kiran Jain, counsel for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Today the matter was listed for hearing on M.(Cr.)P. No.3082/2001, application for suspension of sentence and grant of bail.

Learned counsel for the appellant submitted that the matter may be heard finally as the accused is in custody since 27-10-99 to which learned Additional Public Prosecutor has no objection.

Therefore, the matter was heard finally.

PER L.C. BHADOO, J.

By this appeal under Section 374 (2) of the Cr.P.C. the accused/appellant has questioned the legality of the judgment of conviction and order of sentence dated 12-7-2000 passed by 2nd Additional Sessions Judge, Jagdalpur in S.T. No.58/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of murder of her husband namely Madvi Sukko, convicted her under Section 302 of the I.P.C.

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(18)

मामला क्रमांक.....**सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

and sentenced to undergo imprisonment for life and pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for one year.

The case of the prosecution, in brief, is that in the night of 24-10-99 when deceased Madvi Sukko was sleeping in his house, the accused/appellant attacked him with the rammer on his head, as a result of which he received 3 injuries, parietal and mandible bones were fractured and he died spontaneously. In the morning when his brother Madvi Jetli (PW-2) went to the house of Madvi Sukko at about 6 a.m., Sukko was lying dead in his house. There was injury on his head and his wife Baisi was not at the residence. Thereafter, he went to the house of his uncle Lakhmo and informed him about the incident. When he, Samo and Sunder were going to inform the village Kotwar Bhadaru, Kandaki of village Kavadgaon met them on the way and informed that in the morning Baisi came to their village and informed that in the night she has murdered Madvi Sukko with the rammer. The matter was reported by Madvi Jetli to the police station Kodenar. On receiving the report, S.H.O. police station registered the F.I.R. Ex.-P/3, left for the scene of occurrence and prepared Panchanama Ex.-P/4 of the dead body of the deceased. The plain soil and blood stained soil were taken into possession under Ex.-P/5 from the place of occurrence. One wooden rammer was also

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

taken into possession under Ex.-P/6. The clothes mentioned in Ex.-P/7 were also taken into possession. The site plan Ex.-P/9 was also prepared. The dead body of the deceased was sent to the Primary Health Centre, Kilepal where Dr. M.C. Lange (PW-1) conducted the postmortem on the dead body of the deceased and prepared the report Ex.-P/1.

After completion of the investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate, 1st Class, Jagdalpur who in turn committed the case to the Sessions Jude, Jagdalpur from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 6 witnesses. The statement of the accused was recorded under Section 313 of the Cr.P.C. in which she denied the prosecution evidence appearing against her and stated that she is innocent and has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing arguments of Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para-1 of this judgment.

We have heard learned counsel for the parties.

The homicidal nature of death of Madvi Sukko is not in dispute.

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

As far as involvement of the accused/appellant in committing murder of her husband Madvi Sukko is concerned, learned trial Court has based the conviction on the evidence of PW-5 namely Madvi Koso, son of the accused and deceased. We have perused the evidence of Madvi Koso who has turned hostile. From his evidence, it is evident that in the fateful night he was not at his residence. This witness has been declared hostile. On cross-examination by the Additional Public Prosecutor, he has stated that his mother Baisi made extra judicial confession before him that she has committed murder of her husband Madvi Sukko as he was regularly beating her and used to quarrel with her. In the fateful night they consumed liquor, while Madvi Sukko was sleeping, she attacked him with the rammer on his head. This witness again on cross-examination by counsel for the accused has stated that his mother did not disclose to him that she had attacked his father. Whatever he stated in the cross-examination by the Additional Public Prosecutor, he resiles from that while cross-examining by the defence counsel, therefore, no reliance can be placed on his evidence for convicting the accused in connection with the murder of her husband.

Learned Additional Public Prosecutor while referring to the evidence of PW-3 Beko Kosa argued that from the evidence of this

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(31)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का डिप्टी रजिस्ट्रार के आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

witness, it is established that the accused made extra judicial confession before him.

But the evidence of Beko Kosa is also not sterling worth and worth reliance because he has also taken somersault in his evidence. PW-3 Beko Kosa has stated that Baisi was brought in the Panchayat and she stated that she attacked Sukko with the rammer whereas, PW-2 Madvi Jetli in para-2 of his evidence has stated that Madvi Baisi did not attend the Panchayat and she remained absent. Thereafter, the matter was reported to the police station Kodenar. Even PW-3 Beko Kosa on cross-examination by the defence counsel in para-6 has stated that it is correct to say that Baisi has not stated before him that she attacked the deceased and murdered him. She disclosed before the Panchayat whereas, PW-2 Madvi Jetli has stated that Baisi did not attend the Panchayat. Even PW-3 Beko Kosa has made improvement before the Court, in the statement recorded under Section 161 of the Cr.P.C. he stated that Baisi met him on the way and there she stated that in the night she had murdered her husband, therefore, on such evidence no reliance can be placed.

In view of the above, we are of the considered opinion that the prosecution has utterly failed in connecting the accused/appellant with the murder of her husband Madvi Sukko.

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(22)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Barve	Therefore, finding of the trial Court convicting the accused/appellant based on the evidence of PW-5 cannot be sustained. In the result, the appeal succeeds and same is allowed. The accused/appellant is acquitted of the charge under Section 302 of the I.P.C., therefore, the conviction and sentence awarded under Section 302 of the I.P.C. are set aside. The accused/appellant be set at liberty forthwith, if not required in any other case. M.(Cr.)P. No.3082/2001, I.A. Nos.1636/2001 and 183/2006 stand disposed of accordingly. Sd/- L.C.BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge

[पीछे देखिये